



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By Certified Mail Return Receipt Requested

JUL - 1 2015

Walter A. Reynoso, Esq.
The Minorca
2030 S. Douglas Road, Suite 214
Coral Gables FL 33134

RE: MUR 6498
Edward J. Lynch
Lynch for Congress and
Edward J. Lynch in his official
capacity as treasurer

Dear Mr. Reynoso:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities and information supplied by your clients, Edward J. Lynch and Lynch for Congress and Edward J. Lynch in his official capacity as treasurer ("Committee"), on September 8, 2011, the Federal Election Commission found reason to believe that Mr. Lynch knowingly and willfully violated 2 U.S.C. § 439a(b) (now 52 U.S.C. § 30114(b)) and that the Committee knowingly and willfully violated 2 U.S.C. §§ 434(b) and 439a(b) (now 52 U.S.C. §§ 30104(b) and 30114(b)), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that knowing and willful violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote on whether there is probable cause to believe that a knowing and willful violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of

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the General Counsel ordinarily will not give extensions beyond 20 days. A signed agreement tolling the statute of limitations may be required to receive such an extension.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process*, 76 Fed. Reg. 34986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See* "Procedural Rules for Probable Cause Hearings," 72 Fed. Reg. 64919 (Nov. 19, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

Should you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1385.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa J. Stevenson", with a stylized flourish extending to the right.

Lisa J. Stevenson
Deputy General Counsel - Law

Enclosure
Brief

16047404M-1

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 6498
5 Edward J. Lynch)
6)
7 Lynch for Congress and)
8 Edward J. Lynch in his official capacity)
9 as treasurer)

10
11 **GENERAL COUNSEL'S BRIEF**

12
13 **I. STATEMENT OF THE CASE**

14 This matter was internally generated as a result of a referral from the Reports Analysis
15 Division, based on information indicating that former Florida Congressional candidate Edward
16 Lynch and his principal authorized campaign committee may have violated the personal use and
17 reporting provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). On
18 September 8, 2011, the Commission found reason to believe that Lynch knowingly and willfully
19 violated 2 U.S.C. § 439a(b) (now 52 U.S.C. § 30114(b))¹ by using campaign funds for personal
20 expenses and that Lynch for Congress and Edward J. Lynch in his official capacity as treasurer
21 (the "Committee") knowingly and willfully violated 2 U.S.C. §§ 434(b) and 439a(b) (now
22 52 U.S.C. §§ 30104(b) and 30114(b)) by misreporting a candidate loan and disbursements and
23 disbursing campaign funds for Lynch's personal expenses.²

24 Based on our consideration of the facts described below, including Lynch's admissions
25 that he disclosed a \$50,000 candidate loan on Committee reports filed with the Commission that
26 he never in fact conveyed to the Committee and that he used campaign funds to pay for a variety
27 of personal expenses, the Office of General Counsel is prepared to recommend that the

¹ On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

² See Factual and Legal Analysis ("F&LA"); Certification ¶¶ 2-3, MUR 6498 (Edward J. Lynch, *et al.*) (Nov. 1, 2011).

Commission find probable cause to believe that Lynch knowingly and willfully violated 52 U.S.C. § 30114(b) and that the Committee knowingly and willfully violated 52 U.S.C. §§ 30104(b) and 30114(b).

II. ANALYSIS

A. Statement of Facts

1. Background

Lynch was an unsuccessful candidate for Florida's 19th Congressional District in 2008 and again in a 2010 Special Election. During his first campaign, Lynch filed a Statement of Candidacy and Statement of Organization designating himself as treasurer and custodian of records for the Committee.³ He filed a new Statement of Candidacy when he decided to participate in the 2010 special election to fill a vacancy resulting from Representative Robert Wexler's retirement and did not change his designation as the Committee's treasurer or custodian of records.⁴

Lynch personally prepared and filed the Committee's disclosure reports with the Commission during the 2008 election.⁵ During the 2010 election, Lynch relied on the assistance of Christine Botta, a volunteer with prior campaign experience, in preparing the Committee's disclosure reports, and later on Tim Dornblaser, following Botta's departure.⁶ Lynch nonetheless continued to serve as the named treasurer for his principal campaign committee

³ Form 2, Edward J. Lynch Statement of Candidacy (Feb. 26, 2008); Form 1, Lynch for Congress Statement of Organization (Mar. 4, 2008).

⁴ Form 2, Edward J. Lynch Statement of Candidacy (Jan. 25, 2010).

⁵ Aff. of Edward J. Lynch ¶ 3 (Apr. 2, 2014) ("April Lynch Aff."); E-mail from Walter Reynoso, Counsel to Lynch for Cong. (May 15, 2013, 4:13 pm EST).

⁶ Botta states she left the campaign in March 2010 as a result of her concerns about Lynch's personal use of campaign funds. See Aff. of Christine Botta ¶¶ 29-30 (June 3, 2013) ("Botta Aff.").

1 during that election period. In addition to Botta and Tim Dornblaser, several other individuals
2 managed the campaign-related activities of the Committee: Michael Solomon, the Committee's
3 first campaign manager and only paid staff member; Jessica Dornblaser, the second campaign
4 manager (and spouse of Tim Dornblaser); Lisa Rask, volunteer coordinator; and Christian
5 Posada, who provided general assistance.

6 The record evidence reveals that during each campaign Lynch exercised nearly exclusive
7 oversight of the Committee's funds and bank records and that he restricted his staff's access to
8 records reflecting the Committee's financial activities and status. For example, during the 2008
9 campaign Solomon generally understood that Lynch had loaned his campaign \$80,000, but
10 Lynch refused to provide Solomon access to bank records. As a result, Solomon was unable to
11 determine how much money was available for campaign expenses.⁷ Lynch told Solomon that he
12 had withdrawn funds from the Committee's bank account to repay the loans, but without access
13 to the bank records Solomon was never able to verify that information.⁸ Lynch also told
14 Solomon he had made those loans to the Committee simply so that the disclosure reports would
15 show that the campaign was raising money.⁹

16 Other members of the campaign staff confirm that Lynch controlled the Committee's
17 finances. According to both Jessica and Tim Dornblaser, Lynch was "the only person who

⁷ Solomon, a former New York Police Department Special Investigator, joined the Committee in June 2008 as its only paid staff member. He was to be paid \$2,500 a month "to cultivate donors, plan fundraisers, and organize volunteers and grassroots efforts." Aff. of Michael Solomon ¶ 4 (May 29, 2013) ("Solomon Aff."). He did not file any FEC disclosure reports or have access to the Committee's bank account. Solomon Aff. ¶¶ 8, 10. Solomon left the campaign in September 2008, after only three months, because he had not been paid for his services and was concerned about Lynch's management of the campaign's finances, among other factors. *Id.* ¶¶ 9-10. Solomon indicates that because Lynch never paid him for his services he filed a lawsuit against him and was awarded a \$5,000 judgment in 2009. Lynch has not yet paid that judgment amount. *Id.* ¶ 11.

⁸ *Id.* ¶ 9.

⁹ *Id.*

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1 handled any of the campaign's finances" and he had sole access to the debit card for the
2 campaign account.¹⁰ And even though Jessica Dornblaser arranged the campaign's advertising,
3 she was not provided access to any information about the costs associated with that activity.¹¹

4 Both Tim Dornblaser and Posada declined Lynch's offers to serve as the Committee's
5 treasurer; Lynch later asked Christine Botta to assist him in performing some of the treasurer's
6 duties for the second campaign in the fall of 2009, though he remained as the Committee's
7 named treasurer.¹² Botta's duties included bookkeeping, collecting checks, paying bills, and
8 completing and filing the Committee's disclosure reports with the Commission.¹³ Lynch
9 restricted Botta's access to the Committee's bank records, as he did other volunteers, and
10 because she lacked signature authority for the Committee's bank account, she merely prepared
11 disbursement checks for Lynch's signature.¹⁴ She also confirmed that Lynch was the only
12 person with access to the Committee's debit card.¹⁵ Botta further stated that, despite her

¹⁰ Aff. of Jessica Dornblaser ¶ 8 (June 7, 2013) ("J. Dornblaser Aff."). The Dornblasers were the most active volunteers for the campaign and worked closely with Lynch. Ms. Dornblaser's duties primarily involved "scheduling, strategy, planning, fundraisers, advertising, and general organization," daily meetings with Lynch and travel with Lynch to "meet and greets" and fundraisers. J. Dornblaser Aff. ¶¶ 6, 9, 10; Botta Aff. ¶¶ 8, 18. Tim Dornblaser stated he was a "jack of all trades," making fundraising phone calls, working with data, developing campaign issues, speaking on behalf of Lynch at certain events, and later, stepping in to prepare and file the Committee's disclosure reports with the Commission. Posada described Lynch and the Dornblasers as the "backbone" of the campaign, handling its day-to-day operations.

¹¹ J. Dornblaser Aff. ¶ 17.

¹² During an interview with us, Tim Dornblaser stated that Lynch asked him to be treasurer for the second campaign, but that he declined because he did not have enough time to read the Commission's regulations.

¹³ Botta Aff. ¶¶ 4-5. Lisa Rask stated that Lynch, the Dornblasers, and Botta made all the decisions regarding how the campaign operated, including all campaign spending, but noted that there were many disagreements between them. During an interview with us, Rask opined that Lynch did not adequately consider Botta's experience when making decisions about the campaign's finances.

¹⁴ Botta Aff. ¶ 5. Rask, who began working for the second campaign around December 2009 or January 2010, also verified that, although Botta handled the Commission filings, basic office management, and prepared checks for disbursements, Lynch was the exclusive signatory on the Committee's bank account.

¹⁵ Botta Aff. ¶ 5.

1 requests, Lynch never provided her with complete copies of the Committee's bank records, and
2 as a result, she was never able to reconcile those account balances with the Committee's
3 disclosure reports filed with the Commission.¹⁶

4 2. The Committee's Reporting and Finances

5 a. Omitted and Misreported Disbursements and Receipts

6 A review of the Committee's bank records obtained through a Commission subpoena
7 reveals numerous discrepancies between the Committee's bank account and the reports it filed
8 with the Commission, concerning both its disbursements and receipts. The Committee ceased
9 filing reports with the Commission in December 2010.¹⁷ Since that time, the Committee has
10 failed to respond to at least 18 Requests for Additional Information ("RFAs") concerning the
11 failure to file 18 reports with the Commission.¹⁸ In all, the Committee filed eleven reports and
12 ten amendments with the Commission, from April 2008 through December 2010. During the
13 2008 election cycle, the Committee disclosed \$136,707 in receipts, including \$80,687 in
14 candidate loans, and \$61,352 in disbursements. In 2010, the Committee disclosed \$131,628 in
15 receipts, including \$19,500 in candidate loans, and \$128,884 in disbursements.¹⁹

16 A comparison of the Committee's reports with the Committee's bank records shows that
17 many receipts and disbursements were reported inaccurately. Notably, the Committee failed to
18 disclose almost \$70,000 in disbursements, including personal use expenses, IRS tax levies,

¹⁶ *Id.* ¶¶ 13-14.

¹⁷ The last report that the Committee filed with the Commission was the 2010 October Quarterly, filed on December 3, 2010. *See* <http://docquery.fec.gov/pdf/401/10992457401/10992457401.pdf>.

¹⁸ The most recent RFAI was sent to Lynch on February 18, 2015. *See* Request for Additional Information, Lynch for Congress (May 1, 2015), <http://docquery.fec.gov/pdf/819/15330081819/15330081819.pdf>.

¹⁹ *See* FEC, Lynch for Congress 2008 and 2010 Two-Year Summaries, <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do>.

1 reimbursements to campaign staff, and cash withdrawals. In its 2008 July Quarterly Report filed
2 with the Commission, the Committee also began reporting that Lynch made a \$50,000 loan to
3 the Committee on April 1, 2008, but bank records reveal that those funds were never actually
4 deposited into the campaign's bank account.²⁰ These reporting errors further resulted in cash-on-
5 hand discrepancies — ranging from approximately \$30,000 to \$83,000 — reported in every
6 disclosure report that the Committee filed with the Commission.

7 According to Botta, she attempted to correct the Committee's disclosure reports, but
8 could not reconcile the reports with the bank records because Lynch failed to provide her with
9 the information necessary to do so and would not afford her access to the relevant Committee
10 bank statements.²¹ As such, she was unaware that Lynch failed to deposit the purported \$50,000
11 loan or that the IRS had levied \$21,766.77 of the Committee's funds.²² Botta asserts that she
12 tried to explain to Lynch the need for the receipt records and bank statements to correspond with
13 the Committee's reports, but Lynch allegedly responded that "the FEC will never see his bank
14 records nor would he [*sic*] ever be audited."²³ She also told Lynch that personal use

²⁰ See Committee's 2008 July Quarterly Report; SunTrust Resp. (Aug. 23, 2012) (including bank statement covering March 14, 2008 to April 11, 2008). Lynch admits that he did not deposit the funds into the Committee's bank account, ultimately characterizing the loan amount as a line of credit for the use of the Committee as needed. April Lynch Aff. ¶ 8. As discussed further below, in several instances Lynch either failed to reveal the existence of this loan to relevant members of the Committee staff or provided differing explanations about it in his dealings with them and during the investigation of this matter. See discussion *infra* Part II.D.

²¹ Botta Aff. ¶ 14. Botta also filed FEC disclosure reports covering January through June 2009, which Lynch previously failed to file with the Commission. According to Botta, Lynch said he was under the impression that he did not have to file reports after he lost the 2008 general election. *Id.* Upon notifying him that he had to file reports and would have to pay the fines that the Commission had assessed for his failure to file certain disclosure reports, Lynch stated to Botta that he would not be paying the fines. *Id.* ¶ 9. After he lost the 2010 election, Lynch stopped filing reports with the Commission once again.

²² Our review of the subpoenaed bank statements revealed that the \$50,000 loan was never deposited and that the IRS levied \$20,448.39 and \$1,318.38, plus \$200 in associated fees, from the Committee account. See SunTrust Resp. (Aug. 23, 2012).

²³ Botta Aff. ¶ 14.

1 disbursements were not permitted, but Lynch would allegedly "instruct [her] not to report these
2 to the FEC, or to report the disbursements as loan repayments," that "he did not care that the
3 expenses were not permitted," and "continued to make those types of disbursements against [her]
4 advice."²⁴

5 Lynch denies Botta's allegations and asserts that she "was working against the
6 campaign."²⁵ He claims that she was a plant by the opposing party intent on sabotaging his
7 campaign. He asserts further that Botta was disgruntled because she may not have been
8 sufficiently involved with campaign strategy. He also claims she stole bank documents and
9 distributed them to his opponents after leaving the campaign in March 2010.²⁶ During our
10 investigation, no other witness associated with the campaign staff expressed similar concerns
11 about Botta or her conduct.

12 b. Personal Use of Campaign Funds

13 In addition to its reporting errors, the record evidence reflects that as much as \$53,500 in
14 Committee funds were used to pay personal expenses of the candidate.²⁷ Of that amount, \$5,000
15 involves uncontroverted personal use expenses, over \$18,000 were payments for expenses
16 involving a mixture of campaign and personal use, and another \$30,530 consists of cash

²⁴ *Id.* ¶¶ 10-11, 13-14, 20.

²⁵ RTB Resp. at 1.

²⁶ Lynch Resp. at 3-4; E-mail from Edward J. Lynch (Feb. 3, 2012, 5:20 pm EST).

²⁷ Although certain bank records obtained through compulsory process suggested that as much as \$80,000 in Committee disbursements lacked any obvious nexus to a legitimate campaign purpose, *see* SunTrust Resp. (May 15, Aug. 23, Sept. 13, 2012), subsequent documentation obtained from Lynch and other campaign staff during our investigation reflects that some of those expenses could have been incurred in connection with fundraisers or other campaign events, or were expenses related to the campaign office and campaign-related goods and services. *See e.g.*, Aff. of Edward J. Lynch at 2, 5-8, Exs. A, B, C (June 4, 2013) ("June Lynch Aff."); J. Dornblaser Aff. ¶¶ 9, 15; E-mail from Walter Reynoso, Counsel to Lynch for Cong. (May 15, 2013, 4:13pm EST). As such, we have eliminated those expenses from the totals provided here.

1 withdrawals from the campaign bank account for which there is no record of any campaign-
2 related purpose. The record also revealed an additional \$21,766.77 in IRS-initiated tax levies
3 from the Committee's bank account that were never disclosed in the Committee's reports to the
4 Commission.²⁸

Lynch concedes that he spent “over \$5,000” in campaign funds for personal expenses, including seven months of a recurring gym membership fee at PF Gyms, a payment to Florida Power and Light for his home utility bill, an emergency room visit, a driver’s license fee, payment on a personal loan, a gun holster, shooting range fees, and retail and clothing purchases.²⁹ Lynch explained that “[i]n some instances the payments were made erroneously because [he] did not have a personal credit card available to make the purchase or because [he] inadvertently provided the wrong account number to the vendor. In other instances, [he] erroneously believed the campaign could fund certain expenses.”³⁰ In the case of the gym membership, it appears that the recurring payment was never redirected, and there is no record in the Committee’s disclosure reports that Lynch attempted to reimburse the Committee for the payments that Lynch concedes were erroneously sourced from Committee funds.

28 The investigation determined that the IRS seized \$21,766.77 from the Committee's account in May and August 2008. Lynch acknowledges that the funds were levied "to satisfy [his] personal income tax obligations" and that he did not reimburse the Committee for the amount of the payments. April Lynch Aff. ¶ 7. It appears that Lynch had initially opened the campaign bank account using his social security number rather than a federal committee identification number, which may have caused the IRS to seek to levy the campaign account. Lynch Resp. at 1 (June 24, 2010). Lynch closed that account in September 2008, shortly after the funds were levied, and opened a new campaign account using the Committee number. See SunTrust Resp. (May 15, Aug. 23, Sept. 13, 2012) (including statements and other bank records for three accounts that the Committee held).

²⁹ April Lynch Aff. ¶ 4. Some of those retail purchases included payments to Build-A-Bear Workshop, Brookstone, Best Buy, Neiman Marcus, and Waldenbooks, among others.

30 *Id.*

1 Lynch also admits to spending campaign funds on expenses that were for a mixture of
2 campaign and personal use, including vehicle expenses, cell phone payments, meals, and cash
3 withdrawals, but states that he and the Committee failed to keep a log of such expenditures. The
4 Committee's bank records reflect \$6,311.87 in vehicle expenses, and Lynch acknowledges
5 spending that amount for gasoline, tolls, and parking.³¹ He admits that the "expenses were for
6 [his] personal vehicle that [he] also used for the campaign" but that he did not document those
7 expenses or reimburse the Committee for any expenses related to the personal use of the
8 vehicle.³²

9 The Committee also disbursed a total of \$6,398.27 for the payment of cell phone
10 expenses. Botta alleged that the campaign paid for Lynch's and his wife's cell phone bill, and
11 Lynch admits that the cell phone expenses involved a mixture of campaign and personal use and
12 that the Committee paid the bills in full without any formal allocation method.³³ Lynch asserted
13 that the "campaign" decided "that the most cost effective solution was to use [Lynch's] existing,
14 unlimited plan with [Lynch's] cellular phone as well as the one [his] wife had."³⁴ Lynch has
15 been unable to explain what percentage of the cell phone use was campaign related.

16 The Committee's bank records also show \$30,530 in cash withdrawals through ATM and
17 bank teller withdrawals for which there is no documentation reflecting how the withdrawn funds
18 were used and by whom. Those withdrawals ranged from as low as \$42 to as high as \$9,000, but

³¹ *See id.* ¶ 6.

³² *See id.*; J. Dornblaser Aff. ¶ 10.

³³ Botta Aff. ¶ 16; April Lynch Aff. ¶ 6. Lynch acknowledged that the cell phone account holder was actually his company, Deleon Industries, which raises the possibility that he used the cell phone for his personal and business use, in addition to campaign use. June Lynch Aff. at 2.

³⁴ E-mail from Edward J. Lynch (Feb. 3, 2012, 5:20 pm EST); RTB Resp. at 1.

1 most were \$100 or more. Lynch acknowledges that he withdrew over \$30,000 in cash from
2 Committee bank accounts and that he failed to maintain any records relating to the withdrawals,
3 such as withdrawal slips or receipts reflecting the disposition of the cash.³⁵ Indeed, Lynch does
4 not assert that he used the cash to pay direct Committee expenses; rather, he claims that he
5 viewed the cash as repayments for his personal loans to the Committee. Even accepting that
6 claim concerning his purpose at the time he obtained the cash, the Committee reported only half
7 of Lynch's known cash withdrawals as loan repayments in its disclosure reports.

8 Lynch has made similar claims about his use of the Committee's bank debit card for
9 many personal purchases, contending he used the card in part to pay back loans he made to his
10 campaign "in as small increments as possible" and to ensure that the campaign would have a
11 record of those transactions.³⁶ Lynch's record-keeping explanation appears inconsistent with the
12 facts, however, as most of the personal use expenses that our investigation uncovered were not
13 reported at all. For example, the Committee failed to report Lynch's purchase at Build-A-Bear,
14 his shooting range and gun holster fees, and his payment of his driver's license fee, which were
15 all made with the Committee's debit card.³⁷ And although the Committee did report two
16 disbursements made to PF Gyms on August 21 and September 28, 2009 as payments to Lynch,
17 between October 2009 and November 2010 the Committee continued to pay the same recurring
18 charges on its debit card without reporting any of those payments.³⁸

³⁵ April Lynch Aff. ¶ 5.

³⁶ *Id.*; Lynch Resp. at 2-3.

³⁷ See Committee's 2009 July Quarterly, October Quarterly, and Year-End Reports.

³⁸ Ten additional disbursements to PF Gyms appear in the Committee's bank statements that were not disclosed in the Committee's reports. See SunTrust Resp. (May 15, 2012); Committee's 2009 Year-End Report and 2010 April, July, October Quarterly and Year-End Reports.

1 Finally, the campaign disbursed \$5,559.71 for restaurants and meals that appear to be of a
2 personal nature.³⁹ Lynch represents that the meal expenses were related to the campaign: he
3 bought food for volunteers, "had meals with the campaign staff after campaign events or at the
4 campaign office," and that there were "CAMPAIGN related meals that [he] personally paid for
5 and did not note."⁴⁰ But Lynch was able to provide records or details concerning only a portion
6 of the more than \$8,000 in meal expenses we identified.⁴¹ Indeed, during their interviews both
7 Botta and Rask, the campaign's volunteer coordinator, questioned the nexus of the meals to any
8 genuine campaign purpose. They both asserted that Jessica Dornblaser and Lynch went out to
9 lunch on a daily basis and always paid for those meals using campaign funds.⁴² Rask further
10 recalled hearing arguments at the campaign office between Botta, Lynch, and Jessica Dornblaser
11 about the propriety of using Committee funds to pay for routine lunches for Lynch, Jessica, and
12 Tim Dornblaser without any apparent campaign purpose. Additionally, some of the meal
13 expenses were paid months after the April 13, 2010 special election, and thus after the campaign
14 activity presumably had ceased.⁴³

³⁹ The bank records revealed a larger amount of restaurant expenses but documentation provided by Lynch and the Committee during our investigation enabled us to eliminate amounts apparently paid in connection with specific campaign events. *See supra* note 27.

⁴⁰ April Lynch Aff. ¶ 6 (emphasis in original).

⁴¹ *See* June Lynch Aff. at 4-10, Exs. B and C. It is also possible that a portion of Lynch's cash withdrawals were also used to pay for his daily meal expenses.

⁴² Botta Aff. ¶ 8. Botta explained that she took note of, and offense to, Lynch's campaign-funded daily meals because she drove 100 miles each day to volunteer for the campaign and never requested reimbursement for her daily gas or vehicle expenses. *Id.*

⁴³ *See* SunTrust Resp. (May 15, 2012).

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B. There is Probable Cause to Believe that Lynch and the Committee Disbursed Campaign Funds to Pay for Personal Expenses

The Act affords federal candidates and their campaign committees broad latitude in the disposition of their campaign funds and provides that contributions accepted by a candidate may be used by the candidate "for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate"⁴⁴ Nonetheless, campaign funds cannot be converted to "personal use" by "any person."⁴⁵ Conversion to personal use occurs when funds in a campaign account are used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."⁴⁶ The Act and Commission regulations further set forth certain uses of campaign funds that constitute conversion to personal use *per se*, including utility payments, noncampaign-related automobile expenses, and health club dues, among others.⁴⁷ The Commission's regulations also require committees to maintain and preserve for three years a log or "other record" of the dates and expenses involving any use of campaign funds for both personal- and campaign-related purposes — that is, "mixed use" expenses.⁴⁸

⁴⁴ 52 U.S.C. § 30114(a)(1). Any candidate who makes a disbursement does so as an agent of the candidate's authorized committee. *Id.* § 30102(e)(2).

⁴⁵ *Id.* § 30114(b)(1).

⁴⁶ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g).

⁴⁷ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g); *see* MUR 5895 (Meeks for Congress) (finding candidate and committee violated Act by, *inter alia*, paying for personal trainer expenses and vehicle lease expenses with campaign funds). In adopting the personal use regulations, the Commission explained that "[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use." Explanation and Justification for Final Rules for Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995). The *per se* list of expenses, however, "are automatically considered to be personal use" that a committee "cannot pay for." *See* FEC CAMPAIGN GUIDE FOR CONG. CANDIDATES AND COMMS. at 54 (Apr. 2008).

⁴⁸ 11 C.F.R. § 113.1(g)(8). Commission regulations require committees to keep an account and records of disbursements for three years after the report for which records and account relate, and a log or record of mixed-use

1 Lynch appears to have used as much as \$53,500 or more in Committee funds to pay
2 personal expenses. He admits to spending more than \$5,000 on *per se* personal use expenses,
3 including seven months of a recurring gym membership fee, his home utility bill, an emergency
4 room visit, a driver's license fee, payment on a personal loan, a gun holster, shooting range fees,
5 and retail and clothing purchases.⁴⁹ But in excess of another \$18,000 in Committee expenses
6 involved unallocated mixed-use payments for vehicles, cell phones, and meals—expenses for
7 which neither Lynch nor any other campaign staff could provide receipts or documentation
8 demonstrating what portion related to activities connected with the campaign.⁵⁰ With regard to
9 the \$6,311.87 in mixed-use vehicle expenses, absent a basis for the Commission to conclude that
10 the personal use of the vehicle amounted to a *de minimis* use, the Commission's regulations
11 require "the person(s) using the vehicle for personal activities [to] reimburse the campaign
12 account within thirty days for the expenses associated with the personal activities."⁵¹ The
13 evidence confirms that Lynch used the vehicle for both personal and campaign purposes but
14 failed to allocate or document those expenses at the time and did not reimburse the Committee
15 for any expenses related to the personal use of the vehicle. Accordingly, he was required by

expenses for three years after the report disclosing the disbursement is filed. 11 C.F.R. §§ 102.9(c), 113.1(g)(8). Additionally, respondents are instructed to preserve Committee records upon being notified of the Commission's reason to believe finding. Because Lynch was notified of the Commission's reason to believe finding within the three year recordkeeping time period, Lynch should have kept all available records relating to these expenses. See Letter from Chair, FEC, to Edward J. Lynch (Nov. 7, 2011) (advising respondent that he has a "legal obligation to preserve all documents, records and materials relating to this matter").

⁴⁹ April Lynch Aff. ¶ 4.

⁵⁰ See 11 C.F.R. § 113.1(g)(8) (requiring committees to keep a contemporaneous log of such mixed-use expenses).

⁵¹ See 11 C.F.R. § 113.1(g)(1)(ii)(D); see also Conciliation Agreement ¶ 9, MUR 6585 (Edolphus Towns) (admitting to personal use violations involving the payment of automobile expenses for a vehicle that was used for mixed campaign-related and personal purposes where the Respondents failed to keep records of the expenses related to the personal use); Certification ¶ 1, MUR 6585 (Mar. 6, 2014) (approving conciliation agreement).

1 regulation to reimburse the expenses associated with his personal use of the vehicle, but failed to
2 do so.

3 Additionally, whatever the commercial rationale for the campaign's decision to use the
4 candidate's personal cell phone service for campaign purposes, it appears that the cell phone
5 expenses (totaling \$6,398.27) would have existed irrespective of Lynch's campaign. Lynch has
6 been unable to describe what percentage of the cell phone use consisted of campaign use, his or
7 his wife's personal use, or Lynch's business use. As such, unless the primary use of the phone
8 was campaign-related — and Lynch does not assert it was, and the fact that the cell phone
9 service plan pre-existed the campaign reasonably suggests the contrary — he should have
10 reimbursed the campaign for the pro-rated amount of the cost of the service to account for his
11 and his wife's regular personal use of the cell phones or any use of the cell phones for Lynch's
12 business.⁵²

13 Similarly, the Commission determines on a case-by-case basis whether restaurant and
14 meal expenses would have existed irrespective of the candidate's campaign to determine whether
15 they were for personal use.⁵³ While using committee funds to pay for meals during face-to-face
16 fundraising events is permissible, routine or daily meal expenses are not permissible campaign
17 expenses as they would exist irrespective of the campaign,⁵⁴ indeed, Commission regulations
18 expressly identify "routine living expenses"—such as the cost of food—as items that are not

⁵² Although the Commission has not directly addressed allocation of cell phone expenses, the circumstances would be analogous to cases involving fixed expenses such as vehicle leases for which the Commission requires that campaigns maintain a log or other record associated with the use of the vehicle for personal activities so that the costs for the mixed use of those fixed expenses may be allocated. See Final Audit Rpt. on Meeks for Congress at 17-18, MUR 5895 (Meeks for Congress).

⁵³ 11 C.F.R. § 113.1(g)(ii).

⁵⁴ *Id.*

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1 considered campaign expenditures.⁵⁵ The investigative record establishes that Lynch engaged in
2 a practice of paying for daily lunches of a personal nature with campaign funds.⁵⁶ Lynch's
3 failure to provide any records reflecting a connection to any campaign event or purpose, despite
4 his known obligation to preserve such records, reflects that at least a portion of the \$5,559.71 in
5 restaurant and meal expenses existed irrespective of the campaign.

6 Finally, the Act and Commission regulations require committees to make disbursements
7 by check, drawn on a committee's designated account, so as to maintain a record of the
8 committee's spending.⁵⁷ Lynch nonetheless made over 40 cash withdrawals totaling \$30,530
9 from the Committee's account. Lynch acknowledges that he withdrew that amount and that he
10 failed to maintain any records that might indicate that the cash was used for campaign-related
11 purposes.⁵⁸ Lynch contends that he treated that cash as repayment for personal loans he provided
12 the Committee; but the amount of cash he withdrew combined with the total in Committee debit-

⁵⁵ 11 C.F.R. § 100.153; 11 C.F.R. § 113.1(g)(ii). *See also* FEC CAMPAIGN GUIDE FOR CONG. CANDIDATES AND COMMS. at 55 (Apr. 2008) (explaining that, for instance, "a candidate may not use campaign funds to take his or her family out to dinner").

⁵⁶ As discussed above, both Botta and Rask claim that Lynch used campaign funds for meals on a daily basis and noted that the propriety of those expenses was explicitly questioned at the time. The Committee's bank records confirm Lynch's frequent use of the Committee's debit card for meal purchases on back-to-back days during certain weeks, albeit not every day of each election cycle. *See* SunTrust Resp. (May 15, 2012). That pattern exists throughout both the 2008 and 2010 election cycles, and includes at least 10 payments for meal-related expenses with the debit card after the 2010 Special Election. *Id.* Botta and Rask's observations concerning the routine nature of these expenses and the use of campaign funds to pay them is further supported by Lynch's regular withdrawal of cash from the Committee account, which also remains unexplained.

⁵⁷ 52 U.S.C. § 30102(h); 11 C.F.R. § 102.10.

⁵⁸ April Lynch Aff. ¶ 5. Lynch's withdrawal of over \$30,000 in cash from the Committee accounts without retaining any documentation also belies his recordkeeping claims relating to use of the debit card and his large cash withdrawals, some of which exceeded \$1,000 each, further appear to violate the Act's restrictions on the use of petty cash. 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

1 card purchases for personal items exceeds the amount of funds that Lynch apparently deposited
2 into the Committee's account.⁵⁹

3 For all of these reasons, we therefore are prepared to recommend that there is probable
4 cause to believe that Lynch and the Committee, acting through Lynch, violated 52 U.S.C.
5 § 30114(b) by using campaign funds for personal use.

6 **C. There is Probable Cause to Believe that the Committee, Acting Through**
7 **Lynch, Filed Inaccurate Reports With the Commission**
8

9 The Act requires committee treasurers to file reports of receipts and disbursements in
10 accordance with the provisions of 52 U.S.C. § 30104 and 11 C.F.R. § 104.1(a). The treasurer
11 function is not merely ministerial. The Act and Commission regulations require treasurers to be
12 responsible for the accuracy of the information contained in committee disclosure reports as well
13 as the timely and complete filing of those reports.⁶⁰ Those reports must include, *inter alia*, the
14 amount of cash on hand at the beginning and end of a reporting period and the total amount of
15 receipts and disbursements.⁶¹ The Act requires accurate reporting of the total amount of loans
16 made or guaranteed by the candidate and the repayment of those loans.⁶² Committees must also
17 disclose itemized and unitemized breakdowns of disbursements and to disclose the name and
18 address of each person who has received any disbursement in an aggregate amount or value in

⁵⁹ Additionally, only half of Lynch's cash withdrawals were reported as loan repayments on the Committee's disclosure reports. And even when they were disclosed in the Committee's reports, they were not reported in a consistent manner. See *infra* II.C.

⁶⁰ 11 C.F.R. § 104.14(d).

⁶¹ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

⁶² 52 U.S.C. § 30104(b)(2)(G); 11 C.F.R. § 104.3(a)(3)(vii)(B), (b)(2)(iii)(A).

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1 excess of \$200 within the calendar year, together with the date and amount of any such
2 disbursement.⁶³

3 Lynch remained the Committee's named treasurer through both the 2008 and 2010
4 election cycles. During that time, each disclosure report that the Committee filed with the
5 Commission contained reporting errors. First, every report contained cash-on-hand reporting
6 inaccuracies, ranging from \$30,959.80 to \$83,067.36, which appear to be the result of the
7 Committee's failure to report disbursements and its misreporting of certain receipts and
8 disbursements. Specifically, the Committee failed to report almost \$70,000 in disbursements,
9 including personal use expenses, IRS tax levies, reimbursements to campaign staff, and cash
10 withdrawals.

11 The Committee further failed to disclose accurate payment information when it listed
12 Lynch as the payee instead of the vendor that was paid as part of his claimed efforts to repay his
13 loans. The putative loans and repayments that the Committee reported were also reported
14 inaccurately — some were reported on Schedule B as receipts and some on Schedule C as debts,
15 but not both as Commission regulations require.⁶⁴ Furthermore, by disclosing inaccurate payee
16 information for itemized disbursements and failing to include accurate totals for unitemized
17 disbursements — in part because of Lynch's frequent use of cash to make disbursements — the
18 disclosure reports did not comply with the reporting requirements of the Act.⁶⁵

⁶³ See 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b). This also gives rise to certain record-keeping obligations. Among them, a treasurer must keep an account of the name and address of every person to whom a disbursement is made, together with the date, amount and purpose of the disbursement, and must keep a receipt or other record for each disbursement in excess of \$200 by or on behalf of the committee. 52 U.S.C. § 30102(c); 11 C.F.R. § 102.9(b)(2).

⁶⁴ See 11 C.F.R. § 104.3(a), (d).

⁶⁵ See 52 U.S.C. § 30104(b)(4)-(6).

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1 Finally, the Committee also misreported the receipt of a loan in violation of 52 U.S.C.
2 § 30104(b)(2)(G) when it reported a \$50,000 candidate loan that was never deposited into the
3 campaign's account. The Committee continued to report this "loan" in its reports with the
4 Commission for over two years until December 2010, but Lynch failed to deposit those funds
5 into the Committee's bank account during that time. During the course of the instant
6 Commission proceeding, Lynch's characterization of this claimed loan to the Committee
7 evolved. In a variety of initial responsive filings, Lynch consistently described the \$50,000
8 transaction as a "loan" to the Committee.⁶⁶ Only after we engaged in our investigation did he
9 characterize the \$50,000 as a "line of credit" that he set aside for the use of the Committee on an
10 "as needed" basis. He has never explained, however, why he caused the Committee to report the
11 amount as a loan that the Committee had actually received.⁶⁷

12 Accordingly, for all of these reasons, we are prepared to recommend that there is
13 probable cause to believe that the Committee and Lynch, in his official capacity as treasurer,
14 violated 52 U.S.C. § 30104(b).

15 **D. There is Probable Cause to Believe that Lynch and the Committee Acted**
16 **Knowingly and Willfully**
17

18 The Act also prescribes additional monetary penalties for violations that are knowing and
19 willful.⁶⁸ A violation of the Act is knowing and willful if the "acts were committed with full

⁶⁶ Lynch initially stated that the allegation that the "\$29,800 and *subsequent funds* were never deposited is completely false," and stated that he "set aside a loan of another \$50,000" to loan the campaign. Resp. at 1 (June 24, 2010) (emphasis added). In a later representation, however, Lynch referred to the \$29,000 loan as his "First deposit" and claimed that he "took an additional \$50,000 and made it available to the campaign." E-mail from Edward J. Lynch (Feb. 3, 2012, 05:20 pm EST).

⁶⁷ Lynch Aff. ¶ 8 (Apr. 2, 2014).

⁶⁸ See 52 U.S.C. §§ 30109(a)(5)(B), 30109(d).

1 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁶⁹ This
2 does not require proving knowledge of the specific statute or regulation the respondent allegedly
3 violated.⁷⁰ Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was
4 aware that his conduct was unlawful.”⁷¹ This may be shown by circumstantial evidence from
5 which the respondents’ unlawful intent reasonably may be inferred.⁷² For example, a person’s
6 awareness that an action is prohibited may be inferred from “the [person’s] elaborate scheme for
7 disguising . . . political contributions.”⁷³

8 Here, there is evidence that Lynch misused Committee funds and caused misleading and
9 false disclosure reports to be filed with the Commission to conceal that activity. As an initial
10 matter, Botta has represented in a sworn affidavit that she expressly advised Lynch that he could
11 not use campaign funds for personal expenses, including specific purchases, and that he
12 responded that “the FEC will never see his bank records nor would he [sic] ever be audited,” and
13 that he did not care that certain personal expenses were not permitted.⁷⁴ Botta’s sworn testimony

⁶⁹ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

⁷⁰ *United States v. Danielczyk*, 917 F.Supp.2d 573 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁷¹ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁷² *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁷³ *Id.* at 214-15. As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁷⁴ Botta Aff. ¶¶ 13-15.

1 therefore directly evidences Lynch's knowledge that his activities were prohibited by law and
2 that he purposefully disregarded those legal restrictions.

3 Other Committee witnesses tend to corroborate Botta's sworn assertions. For example,
4 Lynch initially represented in a filing with the Commission that campaign funds were used to
5 make a purchase at Build-A-Bear as a thank you gift for his daughter's extensive work on the
6 campaign,⁷⁵ but in her interview during our investigation, Rask agreed with Botta that neither
7 Lynch's wife nor children were significantly involved with his campaign.⁷⁶ Lynch further
8 asserted that he permitted certain campaign workers to use the campaign debit card "for minor
9 campaign related matters on a few occasions," but that contradicts the claims of his campaign
10 staff, all of whom state that Lynch maintained sole control over the Committee's debit card.⁷⁷
11 Thus, Lynch's assertions that Botta is biased or otherwise unreliable remain unpersuasive. Nor
12 does his claim of bias explain the substantial personal use and reporting violations unrelated to
13 Botta's representations — including the misreported and mischaracterized \$50,000 loan or the
14 \$21,766.77 in unreported tax levies that occurred more than a year before Botta joined the
15 campaign.⁷⁸

16 In addition to the direct evidence of Lynch's intent, Lynch also sought to conceal his
17 personal use of campaign funds in a variety of ways that suggest he was aware of the relevant
18 personal use prohibitions and reporting requirements. Lynch routinely obtained Committee

⁷⁵ See RTB Resp. at 2 (stating that his 11-year old daughter spent countless hours helping out); see E-mail from Walter Reynoso, Counsel to Lynch for Congress (May 15, 2013, 4:13 pm EST) (indicating that the teddy bear was "a gift to one of the volunteers").

⁷⁶ See Botta Aff. ¶¶ 17, 21. Tim Dornblaser also told us that Lynch's wife and children were present for some of the larger events, but did not work for the campaign.

⁷⁷ Lynch Aff. ¶ 3 (Apr. 2, 2014).

⁷⁸ Botta volunteered with Lynch's campaign beginning October or November 2009. Botta Aff. ¶ 4.

1 funds through untraceable cash withdrawals—prohibited by Commission regulations precisely as
2 a record-keeping protection. He also restricted staff access to campaign accounts and records.
3 And he made inconsistent claims about his activities to Committee staff at the time of the events
4 in question. For instance, he refused to provide Solomon, his campaign manager in 2008, with
5 access to bank statements and falsely informed Solomon that he had deposited funds into the
6 Committee account but later withdrew them.⁷⁹ Similarly, when Botta and Lynch reviewed the
7 Committee's disclosure reports and bank statements together, Lynch failed to provide her with
8 the statements for the period that would have covered the \$50,000 loan transaction, asserting that
9 he regularly threw bank statements away.⁸⁰ As such, Lynch took affirmative steps to conceal the
10 fact that certain funds were never deposited into the campaign's bank account.

11 In addition, during this proceeding Lynch has acknowledged certain facts relating to his
12 intent at the time of the activity in question. For example, he now admits that he caused the
13 Committee to report a \$50,000 loan knowing that he had not in fact conveyed those funds to the
14 Committee. Likewise, during the campaign Lynch told Botta that he deposited personal funds
15 into the campaign account and withdrew them but had not reported the repayment to the FEC.⁸¹
16 He also acknowledged to both Solomon and Botta that he did not report certain loan repayments
17 specifically because he "wanted people to think the campaign had a lot of money," reflecting his
18 knowledge of both the Committee's obligation to report its financial condition and his willful
19 disregard of that obligation.⁸²

⁷⁹ Solomon Aff. ¶¶ 9-10.

⁸⁰ Botta Aff. ¶ 13.

⁸¹ *Id.* ¶ 26.

⁸² *Id.*; Solomon Aff. ¶ 9.

1 Moreover, the record here also indicates that Lynch was aware that the IRS had levied
2 Committee funds in 2008 but nonetheless deliberately failed to disclose that activity in any
3 Committee report filed with the Commission.⁸³ Lynch also limited access of campaign staff to
4 the bank statements that would have revealed the IRS transactions, providing a variety of
5 explanations concerning those levies, including telling staff that press reports about the tax liens
6 were merely false claims of his opponent, or describing them simply as liens that everyone had.⁸⁴
7 Only after the investigation uncovered the transaction through review of Committee bank records
8 did Lynch acknowledge the existence of the levies and concede that they satisfied a personal tax
9 obligation for which he has not reimbursed the Committee.⁸⁵

10 Finally, the manner in which Lynch misreported or failed to report his personal use of
11 Committee funds also suggests that he knowingly and willfully engaged in that activity. For
12 instance, the Committee incorrectly reported that Lynch was the payee for some of the
13 disbursements in its reports with the Commission, rather than providing the name of the actual
14 vendor involved in the personal expense. Other, more obvious personal use transactions were
15 omitted entirely, including disbursements to PF Gyms and certain retail establishments that
16 might draw questions about the nexus to the campaign, such as purchases made at Build-a-Bear.

17 Therefore, for these reasons we are prepared to recommend that there is probable cause to
18 believe that Lynch and the Committee's violations were knowing and willful.

⁸³ In fact, bank records reflect that Lynch closed the Committee's bank account in September 2008, soon after the IRS levied the Committee's funds in May and August 2008, and opened a new account, claiming he did so in response to "possible fraud." Compl. at 25.

⁸⁴ Botta Aff. ¶ 23.

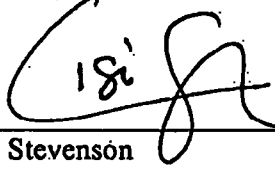
⁸⁵ April Lynch Aff. ¶ 7.

III. CONCLUSION

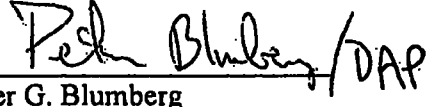
Based on the foregoing, the Office of General Counsel is prepared to recommend that there is probable cause of believe that Edward J. Lynch knowingly and willfully violated 52 U.S.C. § 30114(b) and that Lynch for Congress and Edward J. Lynch in his official capacity as treasurer, knowingly and willfully violated 52 U.S.C. §§ 30104(b) and 30114(b).

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